

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of

Application for Review of a Decision of  
the Wireline Competition Bureau

Dooly County School System, Vienna,  
Georgia

Schools and Libraries Universal Service  
Support Mechanism

File Nos. 531942, 482677

CC Docket No. 02-6

**Application for Review**

Pursuant to Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, Dooly County School System ("Dooly County") through its undersigned agent seeks Commission review of a decision of the Wireline Competition Bureau ("Bureau") denying Dooly County's Request for Review of a decision by the Schools and Libraries Division of the universal service fund administrator, the Universal Service Administrative Company ("USAC").<sup>1</sup>

The Bureau Order improperly denied Dooly County's Request for Review of USAC Commitment Adjustments ("COMADs") finding that it had failed to comply with the Commission's competitive bidding rules in Funding Years 2005 and 2006. The COMADs rescinded some \$292,693.18 in funding commitments for those years after concluding that, in each year, while Dooly County had posted a Form 470 for the full four-week period prescribed by the Commission's rules, it had also prepared a Request

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<sup>1</sup> *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Al-Ihsan Academy, South Ozone Park, New York, et al.*, CC Docket No. 02-6, Order, DA 11-1974 (Wir. Comp. Bur. rel. Dec. 5, 2011) ("Bureau Order").

for Proposals (“RFP”) that contained a bid due date that was either five days (Funding Year 2005) or four days (Funding Year 2006) before the allowable contract date.

In denying Dooly County’s Request for Review, the Bureau misinterpreted and misapplied the Commission’s competitive bidding rules, as reflected in the *Aberdeen* precedent,<sup>2</sup> and failed to demonstrate any violation on the part of Dooly County. To the extent a waiver of the Commission’s rules would be necessary, the Bureau erred in denying Dooly County a waiver, as Dooly County has amply demonstrated that special circumstances warrant a deviation from the general rule, that such deviation would better serve the public interest, and that a waiver would be consistent with the Commission’s previous decisions in analogous circumstances.

As described herein, Dooly County requests that the Commission grant this Application for Review, which it seeks pursuant to Sections 1.115(b)(2)(i) (“[t]he action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy”); 1.115(b)(2)(ii) (“[t]he action involves a question of law or policy which has not previously been resolved by the Commission); and 1.115(b)(2)(iii) (“The action involves application of a precedent or policy which should be overturned or revised”) of the Commission’s rules, 47 C.F.R.

§§ 1.115(b)(2)(i, ii, iii).

## **I. Introduction and Background**

Dooly County is a small school system operating in an economically challenged, rural area of central Georgia. It serves approximately 811 elementary school students,

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<sup>2</sup> *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al.*, CC Docket No. 02-6, Order, FCC 07-63, 22 FCC Red 8757 (2007) (“*Aberdeen*”).

314 middle school students, and 340 high school students. Over 90 percent of these students are eligible for free or reduced-price lunches through the national school lunch program.

The county population itself faces substantial economic challenges. Median household income in 2009 was \$31,229.00, well below the Georgia average of \$47,469.00<sup>3</sup> and the national average of \$50,221.00.<sup>4</sup> Over 30 percent of the population falls below the federal poverty level, and less than 70 percent of its residents over age 25 graduated from high school. Well over 50 percent of its residents are black, Hispanic or Latino, or members of other similarly historically disadvantaged groups.

For Funding Years 2005 and 2006, Dooly County participated in the Commission's Schools and Libraries Universal Service Support Mechanism ("E-Rate"), which represents one of its only means through which to obtain essential funding for vitally important digital literacy components of its educational mission. In doing so, for each year, Dooly County properly posted an FCC Form 470 on the USAC web site. The Funding Year 2005 Form 470 (No. 598430000537497) was posted on January 19, 2005, and carried an allowable contract date of February 16, 2005. The 2005 Form 470 referred to Dooly County's 2005 RFP, which in turn specified a due date for bids of February 11, 2005, five days before the allowable contract date. On February 16, 2005, the allowable contract date, Dooly County evaluated the responses it received, and selected its vendor.

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<sup>3</sup> U. S. Census Department data (available at: <http://quickfacts.census.gov/qfd/states/13/13093.html>).

<sup>4</sup> *Id.* (available at: <http://quickfacts.census.gov/qfd/states/00000.html>).

Similarly, for Funding Year 2006, Dooly County posted its Form 470 (No. 137190000577500) on the USAC web site on January 17, 2006. The 2006 Form 470 carried an allowable contract date of February 14, 2005, and referred interested bidders to Dooly County's 2006 RFP. The 2006 RFP specified a due date for bids of February 10, 2006, four days before the allowable contract date. On February 14, 2006, the allowable contract date, Dooly County evaluated the responses it received, and selected its vendor.

Between November 24, 2010 and December 17, 2010, the USAC Schools and Libraries Division issued a series of COMADs rescinding some \$292,693.18 in Funding Year 2005 and 2006 commitments to Dooly County. In each case, the COMAD rested its decision on the finding that "responses to the RFP for the services requested were due before the Form 470 for those same services had been posted for 28 days,"<sup>5</sup> a purported violation of the Commission's competitive bidding rules.

The Bureau Order affirmed the USAC Schools and Libraries Division's decision, finding that Dooly County had violated the strictures of the Commission's *Aberdeen* Order, at ¶ 4, which held that, "[t]he applicant must wait 28 days after the FCC Form 470 is posted to the USAC website or after public availability of an applicant's RFP, whichever is later, before entering into an agreement with a service provider for the requested services." The Bureau Order, despite its obligation to conduct a *de novo* review, 47 C.F.R. § 54.723(a), made no factual finding as to whether Dooly County's RFP had in fact been available for 28 days, nor did the Bureau make any meaningful attempt to analyze the significant differences between the factual situation in *Aberdeen* and that

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<sup>5</sup> *E.g.*, Notification of Commitment Adjustment Letter from USAC Schools and Libraries Division to Denise Bauer, Dooly County School System (Dec. 3, 2010), at 4.

presented by Dooly County. Instead, in denying Dooly County's appeal, the Bureau confined its discussion of the merits of Dooly County's Request for Review to a single paragraph, which it also addressed four other Requests for Review, Bureau Order, ¶ 9.

In doing so, the Bureau Order made no explicit mention of Dooly County's request for waiver, stating only that the "bid submission date ended the competitive bidding process too soon before the end of the required 28-day period," because it was "more than a few days before the allowable contract date," *Id.* Again, the Bureau declined to discuss the significant differences between the situation in *Aberdeen*, where the Commission found a waiver justified where an applicant actually signed a service contract up to three days before the end of the 28-day period, and the situation in Dooly County where, although bids were due four or five days before the allowable contract date, the applicant did not enter into a binding contract, with the attendant prejudice to the interests of other bidders that such action entails, until the required 28-day period had fully elapsed.

This Application for Review ensued.

## **II. Provisional Request for Waiver of Section 1.115(d)**

To the extent required, Dooly County hereby requests a waiver of the 30-day deadline established under Section 1.115(d) of the Commission's rules, 47 C.F.R. § 1.115(d) for filing this Application for Review.

As an initial matter, Dooly County observes that it does not believe a waiver of the deadline is necessary. In the wake of emergency events in Washington, D.C. following the attacks of September 11, 2001, the Commission adopted emergency filing procedures in Docket No. 96-45 that included (i) an extension of the Commission's filing

deadlines to permit requests for review filed pursuant to sections 54.719 through 54.725, 47 C.F.R. §§ 54.719 through 54.725, *and any applications for review arising from such proceedings* to be filed within 60 days of the issuance of the decision being reviewed; and (ii) procedures under which parties filing requests for review, or petitions for reconsideration or applications for review of decisions on requests for review, may, at their option, file their pleadings electronically, either by electronic mail or facsimile.<sup>6</sup> Subsequently, the Commission codified the 60-day filing period on a permanent basis with respect to the filing of initial appeals, for example, Requests for Review seeking Bureau review of USAC decisions.<sup>7</sup>

In a separate undocketed 2001 Order, which explicitly excluded “requests for review of decisions issued by the Universal Service Administrative Company (USAC) filed pursuant to sections 54.719-54.725 of the Commission's rules, or any petitions for reconsideration or applications for review arising from such proceedings,” the Commission established analogous facsimile and electronic mail filing alternatives for certain types of filings in other proceedings.<sup>8</sup>

In 2007, the Commission issued an undocketed order rescinding the emergency electronic mail or facsimile filing procedures adopted in the undocketed 2001 order that

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<sup>6</sup> *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376, 17 FCC Rcd 339 ¶ 3 (2001).

<sup>7</sup> 47 C.F.R. § 54.720; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 03-101, 18 FCC Rcd 9202, 9221 ¶56 (2003) (“*Second Report and Order*”).

<sup>8</sup> *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, FCC 01-345, 16 FCC Rcd 21483 ¶ 2 (2001).

did *not* apply to USAC-related matters.<sup>9</sup> After a diligent search, however, Dooly County has been unable to identify any Commission order restoring the 30-day deadline with respect to Applications for Review of Bureau orders addressing Requests for Review of decisions of the universal service fund administrator. As such, Dooly County believes that this Application for Review is due on Friday, February 3, 2012.

Nevertheless, out of an abundance of caution and to the extent required, Dooly County hereby requests a waiver of the 30-day deadline contained in Section 1.115(d) of the Commission's rules, 47 C.F.R. § 1.115(d), for filing this Application for Review. It is well-established that the Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3.<sup>10</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better

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<sup>9</sup> *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, FCC 07-115, 22 FCC Rcd 11381 ¶ 4 (2007) (ordering clause explicitly rescinding the "the interim electronic filing procedures adopted in *Order FCC 01-345*").

<sup>10</sup> "Time limitations on the filing of applications for review . . . are established solely by Commission rule," and thus can be waived. *MTD, Inc.*, Memorandum Opinion and Order, FCC 90-427, 6 FCC Rcd 34 n.2 (1991) (granting a waiver for an Application for Review filed 10 days late where no other parties would be prejudiced by consideration of this Application for Review on the merits), *citing Crystal Broadcasting Partners*, Memorandum Opinion and Order, FCC 96-141, 11 FCC Rcd 4680 ¶ 7 (1996).

serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

*First*, special circumstances warrant a deviation from the 30-day filing deadline in this case. Dooly County did not receive actual notice of Bureau Order until well after its release, and is filing this Application for Review as promptly as possible after receiving notice. When the Bureau Order was released on December 5, 2011, its caption gave no indication that Dooly County's Request for Review had been denied within. The Commission's Daily Digest entry for the Bureau Order was similarly cryptic. Dooly County's first indication of possible Bureau action came when it received Demand Payment letters, dated December 8, 2011, by mail from USAC on December 12, 2011. Thereafter, on December 13, 2011, Denise Bauer, Dooly County's Technology Director, received a mailed copy of the Bureau Order together with a cover memorandum dated December 9, 2011 from Gina Spade, Deputy Chief, Telecommunications Access and Policy Division. Dooly County received actual notice of the Bureau Order, therefore, only a few days before the school completely shut down for the winter break on Friday, December 16, 2011. From that day until school resumed on January 3, 2012, no school management or administrative personnel were present in the District Office or available to participate in the preparation or filing of this Application for Review. They returned to work on January 3, 2012, the day before the 30-day filing deadline, if applicable, would have expired.

At no time has the Bureau sought to provide notice of the Bureau Order to the undersigned, C. Scott Nutgrass, Universal Funding Consultants, Inc., who serves as the



USAC Agent of Record for Dooly County and who signed and filed Dooly County's original Request for Review and Waiver denied by the Bureau Order.

*Second*, the public interest supports a waiver. As the Commission found when it extended the deadline to 60 days for filing an initial appeal of USAC decisions:

Unlike many parties that typically practice before the Commission, many applicants in this program have no experience with regulatory filing processes. Thus the 30-day time period is often not adequate to allow potential petitioners to gather the documents and synthesize the arguments needed to file pleadings in order to challenge funding decisions.<sup>11</sup>

These considerations apply with no less force in the context of Applications for Review. Further, to prematurely truncate applicant's rights to seek fulsome review of USAC and Bureau decisions rescinding substantial funding commitments would create substantial hardships for many applicants, and undermine the purposes of the E-Rate program. Further, because the Commission's rules provide 60 days within which to file initial Requests for Review, Dooly County initially expected that the same 60-day period would apply to this Application for Review.

Further, no party will be prejudiced by the waiver sought here.<sup>12</sup> The funding has already been committed and disbursed by USAC. With nearly \$300,000.00 at issue, the gravity of this matter is substantial for Dooly County, a small school system operating in an economically-challenged rural area of central Georgia. At the same time, it is but a pittance in the context of the \$2.25 billion annual flow of E-Rate funding. Finally, for a period of at least many years following the events of 2001 (if, indeed, such period is not

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<sup>11</sup> *Second Report and Order*, ¶ 56.

<sup>12</sup> *MTD, Inc.*, n.2.

continuing), the Commission explicitly provided a 60-day filing period, which is far longer than the brief extension Dooly County seeks in this request.

### **III. The Bureau Order Should Be Reversed and the Commitment Adjustments Vacated**

With respect to certain services for which Dooly County sought E-Rate support for Funding Year 2005 and Funding Year 2006, it both posted an FCC Form 470 on the USAC web site, and prepared an RFP, to which the Form 470 referred. In each case, Dooly County entered into a contract for the supported services on the allowable contract date determined by USAC, only after waiting the full 28 days required under Section 54.504(b)(4) of the Commission's rules, 47 C.F.R. § 54.504(b)(4) ("entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services").<sup>13</sup>

In each case, however, the Dooly County Form 470 indicated Dooly County's intention to rely on an RFP, and provided information to prospective bidders on how to access the RFP. For Funding Year 2005, the due date for bids specified in the RFP was February 11, 2005, five days before the February 16, 2005 allowable contract date. For Funding Year 2006, the due date for bids specified in the RFP was February 10, 2006, four days before the February 14, 2006 allowable contract date.

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<sup>13</sup> Citations to the Commission's Part 54 rules in this document will be to the rules as they were codified at the time of the events in question. Section 54.504(b)(4) has since been recodified by the Commission, and appears at 47 C.F.R. § 54.503(c)(4) in the current rules.

**A. Dooly County Complied with the Commission's Competitive Bidding Rules**

It is apparently undisputed that, in each of Funding Year 2005 and 2006, Dooly County complied with the express requirements of Section 54.504(b)(4). In each case, after posting the Form 470 on the USAC web site, Dooly County waited until the allowable contract date before executing a contract with its chosen provider. At that time, the Form 470 had been posted and available for the full four weeks required by Section 54.504(b)(4).

The Bureau Order, rather, found that Dooly County had violated the Commission's "competitive bidding rules" by specifying in its RFP "a precise time when bids were due that was more than a few days before the allowable contract date," Bureau Order, at para. 9. Any such "rule" that the RFP must not require bids to be due before the allowable contract date, however, appears nowhere in the Code of Federal Regulations. Section 54.504(b)(4) does not require Dooly County to post a Request for Proposals of any kind; indeed, the rule does not even mention the term. Thus, had Dooly County done no more than to post a Form 470, there would never have been a question of its compliance with that rule.

Like so many of USAC's E-Rate requirements, the "competitive bidding rule" on which the Bureau relied stems from an uncodified statement in the Commission's 2007 *Aberdeen* Order that, "[t]he applicant must wait 28 days after the FCC Form 470 is posted to the USAC website or after public availability of an applicant's RFP, whichever is later, before entering into an agreement with a service provider for the requested

services.”<sup>14</sup> The Bureau plainly may not rely on this language. Indeed, its very attempt to do so illustrates the substantial difficulties created for the Commission, Bureau, USAC, and applicants alike as a result of the Commission’s determination to leave so many E-Rate compliance requirements as uncodified statements in Commission orders and USAC procedural customs.

*First*, the Bureau plainly cannot rely on a purported violation of *Aberdeen*, which was not issued until 2007, more than a year after Dooly County had completed its Funding Year 2006 purchasing process. In *Aberdeen*, the Commission articulated no intent to make the rule retroactive, which would be an extraordinary remedy that is seldom invoked by the Commission, and virtually never absent a clear statement discussing the constitutional and statutory issues that such *ex post facto* application raises. Thus, the Bureau clearly lacks the authority to cite Dooly County for violations of competitive bidding requirements that were not yet in place at the time of the underlying conduct.

*Second*, neither *Aberdeen* nor its predecessor, the *Ysleta Order*,<sup>15</sup> which had only recently been decided in Funding Years 2005 and 2006, require applicants to leave RFPs open for the full four week period preceding the allowable contract date, *i.e.*, coincident with the availability of the underlying Form 470. Rather, the plain language of *Aberdeen*,

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<sup>14</sup> *Aberdeen*, ¶ 4.

*Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al.*, CC Docket No. 02-6, Order, FCC 07-63, 22 FCC Red 8757 ¶ 4 (2007) (“”).

<sup>15</sup> *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, CC Docket No. 96-45, Order, FCC 03-313, 18 FCC Rcd 26407 ¶ 39 (2003) (“*Ysleta Order*”).

¶ 4, and the *Ysleta Order*, ¶ 39 merely requires the Form 470 and the RFP both to be available to bidders for at least 28 days before the contract is signed, but do not mandate that both 28-day periods coincide. As indicated by the language quoted above, *Aberdeen* requires only that the applicant wait until 28 days after the later of the release of the RFP or the posting of its Form 470 before executing service contract with its chosen provider. Similarly, the *Ysleta Order* states only that, “[t]o the extent that the applicant also relies on an RFP as the basis of its vendor selection, that RFP must also be available to bidders for 28 days.”<sup>16</sup> Like *Aberdeen*, the *Ysleta Order* does not explicitly require the RFP to be open for 28 days that coincide with the four-week period for which Section 54.504(b)(4) requires the applicant to post its Form 470.

*Third*, in any event, the Bureau failed to establish the factual elements necessary to support a finding of a violation of *Aberdeen* or its predecessor, the *Ysleta Order*. The Dooly County RFPs issued for Funding Years 2005 and 2006 are undated, containing only the due date for bids, not any date on which they were issued or publicized. Thus, there is not an adequate factual record in the Bureau Order on which to base a finding of whether or not Dooly County’s RFPs were available for 28 days, as required by *Aberdeen* and the *Ysleta Order*. Accordingly, not only does the Bureau Order fail to cite the *Ysleta*

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<sup>16</sup>This language is also reiterated in the certifications included in Forms 470 and 471. FCC Form 470 requires the applicant to certify that, “I certify that I will post my Form 470 and (if applicable) make my RFP available for at least 28 days before considering all bids received and selecting a service provider,” FCC Form 470 at 7 (Oct. 2010 version). The Form 471 also substantially reiterates this language, requiring the applicant to certify, “that (if applicable) I posted my Form 470 and (if applicable) made any related RFP available for at least 28 days before considering all bids received and selecting a service provider,” FCC Form 471 (Oct. 2010 version).

*Order* as the source of the violation, it is utterly silent as to this essential factual element necessary to support a finding of any violation.

**B. If Required, a Waiver of Section 54.504(b)(4) and the Strictures of the *Ysleta Order* is Warranted**

The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. As discussed above, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

In this case, it is plain that these two criteria are met. *First*, special circumstances warrant a deviation from the general rule. As indicated above, Dooly County faces substantial economic challenges. Median household income in 2009 was \$31,229.00, well below the Georgia average of \$47,469.00<sup>17</sup> and the national average of \$50,221.00.<sup>18</sup> Over 30 percent of the population falls below the federal poverty level, and less than 70 percent of its residents over age 25 graduated from high school. Well over 50 percent of its residents are black, Hispanic or Latino, or members of other similarly historically disadvantaged groups. Dooly County's efforts to expand the economic opportunities available to its residents depend on its ability to deliver quality primary and secondary education services. E-Rate funding is a vital contributor to Dooly County's efforts to succeed in this educational mission.

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<sup>17</sup>U. S. Census Department data (available at: <http://quickfacts.census.gov/qfd/states/13/13093.html>).

<sup>18</sup> *Id.* (available at: <http://quickfacts.census.gov/qfd/states/00000.html>).

The economic privation of Dooly County is only exacerbated by the ongoing financial and debt crises being faced by federal, state and local governmental agencies nationwide. Dooly County faces extreme budget pressures that, even putting aside the COMADs at issue here, will create significant challenges as it seeks to fulfill its educational mission. Since 2009, the Dooly County school budget revenues have declined by some 13 percent, from nearly \$12 million to less than \$10.5 million. Budget cuts of this magnitude, especially in the face of the acute impact of the ongoing economic challenges being faced by students and their families, cannot help but to affect Dooly County's efforts to achieve its educational mission. The COMADs, rescinding nearly an additional \$300,000.00 on the heels of these other cuts, would be a heavy blow.

Further, a waiver would serve the public interest. Even assuming that Dooly County violated the Commission's competitive bidding rules by establishing a due date for RFP responses that was five (Funding Year 2005) or four (Funding Year 2006) days before the allowable contract date under its applicable Form 470 filing, it is wholly disproportional for USAC and the Bureau to rescind the entire funding commitment. Here, there is no claim that there was any adverse impact on the competitive bidding process, or that any bidder was prejudiced by Dooly County's supposed error.

The situation presented here is similar to and, indeed, less egregious than those for which the Commission has previously granted analogous waivers. The Commission, in *Aberdeen*, granted waivers to applicants that actually signed binding contractual commitments before the four-week Form 470 posting period had expired, shortening the prescribed period by one to three days in the process. In granting the waiver, the Commission found that the "requests for discounted services were subject to competitive

bidding for a meaningful period of time . . . [and] that denying these Petitioners requests for funding would create undue hardship and prevent these potentially otherwise eligible schools and libraries from receiving E-rate funding,” *Aberdeen*, ¶ 9.

In this case, Dooly County in fact posted its Form 470 for the entire four-week period required under Section 54.504(b)(4) of the Commission’s rules before signing a contract for services. Had any potential bidder believed that it would be prejudiced by the due date for responses established by the companion RFP, it would have had ample opportunity both before and after that due date, right up until the expiration of the full four week Form 470 posting period, either (i) to request an extension; (ii) to bypass the RFP and submit a response to Dooly County based on the Form 470 directly; or (iii) to otherwise register its concerns with Dooly County. Tellingly, no bidder or prospective bidder did so, and Dooly County received no bid protests thereafter. Indeed, auditors reviewing Dooly County’s Funding Year 2005 and 2006 procurement processes raised no concerns in this area.

While the RFP alone was open following the posting of the Form 470 for fewer than 28 days, the period was only one or two days less than those the Commission found acceptable in *Aberdeen*. Further, as indicated above, potential bidders had other options available to them to indicate an intent or desire to bid that were not available to those at issue in *Aberdeen*. Moreover, Dooly only received one bid in response to the RFP and Form 470 for FY 2006. Thus, a grant of this waiver would be consistent with the Commission’s *Aberdeen* precedent. Like the case in *Aberdeen*, Dooly County’s requests were subject to competitive bidding for a meaningful period of time, up to and including the full four-week Form 470 posting period. Like the case in *Aberdeen*, Dooly County’s



actions did not undermine the fairness of the competitive bidding process. Indeed, the Commission has recently held that the Form 470, not the underlying RFP, is the far more critical of the two in giving effective notice to potential bidders for E-Rate services.<sup>19</sup>

And, like the case in *Aberdeen*, it would create substantial inequities in today's difficult and financially uncertain times to force Dooly County to repay nearly \$300,000 in support at this late date, long after the services have been funded, purchased, used, and paid-for. Such recovery would cause grave injury to the educational opportunities of needy Dooly County students today, a result that runs directly contrary to the entire purpose of the schools and libraries universal service support program. As the Commission found in *Aberdeen* and the *Bishop Perry Order*, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature may not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.<sup>20</sup>

Moreover, like the case in *Aberdeen*, Dooly County's supposed error could neither have provided any advantage to Dooly County nor increased its E-Rate funding.

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<sup>19</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, FCC 10-175, 25 FCC Rcd 18762 (2010), at ¶ 71 ("[R]equiring the FCC Form 470 produces a better competitive bidding process. Currently, schools and libraries are required to post an FCC Form 470 to USAC's website so that service providers easily can view the services that are requested in one centralized location . . . . The nationwide posting on USAC's website ensures that more service providers can obtain notice about the requests for bids.").

<sup>20</sup> *Aberdeen*, ¶ 7; *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 ¶ 23 (2006) ("*Bishop Perry Order*").

#### **IV. Conclusion**

For the foregoing reasons, Dooly County respectfully requests that the Commission waive the filing deadline contained in Section 1.115(d) and grant the foregoing Application for Review.

Respectfully submitted this 10<sup>th</sup> day of January 2012.

Dooly County School System

A handwritten signature in blue ink, appearing to read "C. Scott Nutgrass", is written over a horizontal line.

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